

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

THEOTISTE P. CLARK
925 Vulcan Avenue, #210
Encinitas, CA 92024

Registered Nurse License No. 563910

Respondent.

Case No. 2008-58

OAH No. L2007100665

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on MAY 21, 2008.
It is so ORDERED APRIL 21, 2008.

LaTranene W Tate

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 JAMES LEDAKIS

Supervising Deputy Attorney General

3 RON ESPINOZA, State Bar No. 176908

Deputy Attorney General

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8 Attorneys for Complainant

9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2008-58

13 THEOTISTE P. CLARK

925 Vulcan Avenue, #210

14 Encinitas, CA 92024

OAH No. L2007100665

15 Registered Nurse License No. 563910

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 Respondent.

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18 In the interest of a prompt and speedy settlement of this matter, consistent with the
19 public interest and the responsibility of the Board of Registered Nursing of the Department of
20 Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and
21 Disciplinary Order which will be submitted to the Board for approval and adoption as the final
22 disposition of the Accusation.

23
24 PARTIES

25 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
26 the Board of Registered Nursing. She brought this action solely in her official capacity and is
27 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
28 by Ron Espinoza, Deputy Attorney General.

2. Theotiste P. Clark (Respondent) is representing herself in this proceeding and has chosen not to exercise her right to be represented by counsel.

3. On or about February 17, 2000, the Board of Registered Nursing (Board) issued Registered Nurse License No. 563910 to Respondent Theotiste P. Clark (a.k.a. Theotiste P. Nulsen). The license expired on November 30, 2005. Respondent's license is currently active, and set to expire on November 30, 2009, unless renewed.

JURISDICTION

4. Accusation No. 2008-58 was filed before the Board of Registered Nursing, Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 28, 2007. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2008-58 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2008-58. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2008-58.

9. Respondent agrees that her Registered Nurse License is subject to discipline, and she agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Registered Nursing or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

COST RECOVERY

11. The parties understand and agree that the Board's actual costs of investigation and enforcement of this case total \$3,839.50.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

1 14. In consideration of the foregoing admissions and stipulations, the parties
2 agree that the Board may, without further notice or formal proceeding, issue and enter the
3 following Disciplinary Order:
4

5 **DISCIPLINARY ORDER**

6 **IT IS HEREBY ORDERED** that Registered Nurse License No. 563910 issued
7 to Respondent Theotiste P. Clark is revoked. However, the revocation is stayed and Respondent
8 is placed on probation for three (3) years on the following terms and conditions.

9 **Severability Clause.** Each condition of probation contained herein is a separate
10 and distinct condition. If any condition of this Order, or any application thereof, is declared
11 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
12 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
13 and enforceable to the fullest extent permitted by law.

14 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws.
15 A full and detailed account of any and all violations of law shall be reported by Respondent to
16 the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of
17 compliance with this condition, Respondent shall submit completed fingerprint forms and
18 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted
19 as part of the licensure application process.

20 **Criminal Court Orders:** If Respondent is under criminal court orders, including
21 probation or parole, and the order is violated, this shall be deemed a violation of these probation
22 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

23 2. **Comply with the Board's Probation Program.** Respondent shall fully
24 comply with the conditions of the Probation Program established by the Board and cooperate
25 with representatives of the Board in its monitoring and investigation of the Respondent's
26 compliance with the Board's Probation Program. Respondent shall inform the Board in writing
27 within no more than 15 days of any address change and shall at all times maintain an active,
28 current license status with the Board, including during any period of suspension.

1 Upon successful completion of probation, Respondent's license shall be fully
2 restored.

3 **3. Report in Person.** Respondent, during the period of probation, shall
4 appear in person at interviews/meetings as directed by the Board or its designated
5 representatives.

6 **4. Residency, Practice, or Licensure Outside of State.** Periods of
7 residency or practice as a registered nurse outside of California shall not apply toward a reduction
8 of this probation time period. Respondent's probation is tolled, if and when she resides outside
9 of California. Respondent must provide written notice to the Board within 15 days of any change
10 of residency or practice outside the state, and within 30 days prior to re-establishing residency or
11 returning to practice in this state.

12 Respondent shall provide a list of all states and territories where she has ever been
13 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
14 provide information regarding the status of each license and any changes in such license status
15 during the term of probation. Respondent shall inform the Board if she applies for or obtains a
16 new nursing license during the term of probation.

17 **5. Submit Written Reports.** Respondent, during the period of probation,
18 shall submit or cause to be submitted such written reports/declarations and verification of actions
19 under penalty of perjury, as required by the Board. These reports/declarations shall contain
20 statements relative to Respondent's compliance with all the conditions of the Board's Probation
21 Program. Respondent shall immediately execute all release of information forms as may be
22 required by the Board or its representatives.

23 Respondent shall provide a copy of this Decision to the nursing regulatory agency
24 in every state and territory in which she has a registered nurse license.

25 **6. Function as a Registered Nurse.** Respondent, during the period of
26 probation, shall engage in the practice of registered nursing in California for a minimum of 24
27 hours per week for 6 consecutive months or as determined by the Board.

28 For purposes of compliance with the section, "engage in the practice of registered

nursing” may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent’s probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

7. Employment Approval and Reporting Requirements. Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this Decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, Respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. Supervision. Respondent shall obtain prior approval from the Board regarding Respondent’s level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

9. Employment Limitations. Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational

1 nurses and/or unlicensed assistive personnel on a case-by-case basis.

2 Respondent shall not work as a faculty member in an approved school of nursing
3 or as an instructor in a Board approved continuing education program.

4 Respondent shall work only on a regularly assigned, identified and predetermined
5 worksite(s) and shall not work in a float capacity.

6 If Respondent is working or intends to work in excess of 40 hours per week, the
7 Board may request documentation to determine whether there should be restrictions on the hours
8 of work.

9 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall
10 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
11 than six months prior to the end of her probationary term.

12 Respondent shall obtain prior approval from the Board before enrolling in the
13 course(s). Respondent shall submit to the Board the original transcripts or certificates of
14 completion for the above required course(s). The Board shall return the original documents to
15 Respondent after photocopying them for its records.

16 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with
17 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
18 amount of \$3,839.50. Respondent shall be permitted to pay these costs in a payment plan
19 approved by the Board, with payments to be completed no later than three months prior to the
20 end of the probation term.

21 If Respondent has not complied with this condition during the probationary term,
22 and Respondent has presented sufficient documentation of her good faith efforts to comply with
23 this condition, and if no other conditions have been violated, the Board, in its discretion, may
24 grant an extension of Respondent's probation period up to one year without further hearing in
25 order to comply with this condition. During the one year extension, all original conditions of
26 probation will apply.

27 12. **Violation of Probation.** If Respondent violates the conditions of her
28 probation, the Board after giving Respondent notice and an opportunity to be heard, may set

1 aside the stay order and impose the stayed discipline (revocation) of Respondent's license.

2 If during the period of probation, an accusation or petition to revoke probation has
3 been filed against Respondent's license or the Attorney General's Office has been requested to
4 prepare an accusation or petition to revoke probation against Respondent's license, the
5 probationary period shall automatically be extended and shall not expire until the accusation or
6 petition has been acted upon by the Board.

7 **13. License Surrender.** During Respondent's term of probation, if she ceases
8 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
9 probation, Respondent may surrender her license to the Board. The Board reserves the right to
10 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
11 take any other action deemed appropriate and reasonable under the circumstances, without
12 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
13 will no longer be subject to the conditions of probation.

14 Surrender of Respondent's license shall be considered a disciplinary action and
15 shall become a part of Respondent's license history with the Board. A registered nurse whose
16 license has been surrendered may petition the Board for reinstatement no sooner than the
17 following minimum periods from the effective date of the disciplinary decision:

18 (1) Two years for reinstatement of a license that was surrendered for any
19 reason other than a mental or physical illness; or

20 (2) One year for a license surrendered for a mental or physical illness.

21 **14. Physical Examination.** Within 45 days of the effective date of this
22 Decision, Respondent, at her expense, shall have a licensed physician, nurse practitioner, or
23 physician assistant, who is approved by the Board before the assessment is performed, submit an
24 assessment of the Respondent's physical condition and capability to perform the duties of a
25 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
26 medically determined, a recommended treatment program will be instituted and followed by the
27 Respondent with the physician, nurse practitioner, or physician assistant providing written
28 reports to the Board on forms provided by the Board.

1 If Respondent is determined to be unable to practice safely as a registered nurse,
2 the licensed physician, nurse practitioner, or physician assistant making this determination shall
3 immediately notify the Board and Respondent by telephone, and the Board shall request that the
4 Attorney General's office prepare an accusation or petition to revoke probation. Respondent
5 shall immediately cease practice and shall not resume practice until notified by the Board.
6 During this period of suspension, Respondent shall not engage in any practice for which a license
7 issued by the Board is required until the Board has notified Respondent that a medical
8 determination permits Respondent to resume practice. This period of suspension will not apply
9 to the reduction of this probationary time period.

10 If Respondent fails to have the above assessment submitted to the Board within
11 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
12 practice until notified by the Board. This period of suspension will not apply to the reduction of
13 this probationary time period. The Board may waive or postpone this suspension only if
14 significant, documented evidence of mitigation is provided. Such evidence must establish good
15 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
16 provided. Only one such waiver or extension may be permitted.

17 **15. Participate in Treatment/Rehabilitation Program for Chemical**
18 **Dependence.** Respondent, at her expense, shall successfully complete during the probationary
19 period or shall have successfully completed prior to commencement of probation a Board-
20 approved treatment/rehabilitation program of at least six months duration. As required, reports
21 shall be submitted by the program on forms provided by the Board. If Respondent has not
22 completed a Board-approved treatment/rehabilitation program prior to commencement of
23 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in
24 a program. If a program is not successfully completed within the first nine months of probation,
25 the Board shall consider Respondent in violation of probation.

26 Based on Board recommendation, each week Respondent shall be required to
27 attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics
28 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed

1 by the Board. If a nurse support group is not available, an additional 12-step meeting or
2 equivalent shall be added. Respondent shall submit dated and signed documentation confirming
3 such attendance to the Board during the entire period of probation. Respondent shall continue
4 with the recovery plan recommended by the treatment/rehabilitation program or a licensed
5 mental health examiner and/or other ongoing recovery groups.

6 16. **Abstain from Use of Controlled Substances and Psychotropic (Mood-**
7 **Altering) Drugs.** Respondent shall completely abstain from the possession, injection or
8 consumption by any route of all controlled substances and all psychotropic (mood altering)
9 drugs, including alcohol, except when the same are ordered by a health care professional legally
10 authorized to do so as part of documented medical treatment. Respondent shall have sent to the
11 Board, in writing and within fourteen (14) days, by the prescribing health professional, a report
12 identifying the medication, dosage, the date the medication was prescribed, the Respondent's
13 prognosis, the date the medication will no longer be required, and the effect on the recovery plan,
14 if appropriate.

15 Respondent shall identify for the Board a single physician, nurse practitioner or
16 physician assistant who shall be aware of Respondent's history of substance abuse and will
17 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled
18 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician
19 assistant shall report to the Board on a quarterly basis Respondent's compliance with this
20 condition. If any substances considered addictive have been prescribed, the report shall identify a
21 program for the time limited use of any such substances.

22 The Board may require the single coordinating physician, nurse practitioner, or
23 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
24 addictive medicine.

25 17. **Submit to Tests and Samples.** Respondent, at her expense, shall
26 participate in a random, biological fluid testing or a drug screening program which the Board
27 approves. The length of time and frequency will be subject to approval by the Board.
28 Respondent is responsible for keeping the Board informed of Respondent's current telephone

1 number at all times. Respondent shall also ensure that messages may be left at the telephone
2 number when she is not available and ensure that reports are submitted directly by the testing
3 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately
4 to the Board by the program and Respondent shall be considered in violation of probation.

5 In addition, Respondent, at any time during the period of probation, shall fully
6 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
7 tests and samples as the Board or its representatives may require for the detection of alcohol,
8 narcotics, hypnotics, dangerous drugs, or other controlled substances.

9 If Respondent has a positive drug screen for any substance not legally authorized
10 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
11 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent
12 from practice pending the final decision on the petition to revoke probation or the accusation.
13 This period of suspension will not apply to the reduction of this probationary time period.

14 If Respondent fails to participate in a random, biological fluid testing or drug
15 screening program within the specified time frame, Respondent shall immediately cease practice
16 and shall not resume practice until notified by the Board. After taking into account documented
17 evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the
18 Board may suspend Respondent from practice pending the final decision on the petition to
19 revoke probation or the accusation. This period of suspension will not apply to the reduction of
20 this probationary time period.

21 18. **Mental Health Examination.** Respondent shall, within 45 days of the
22 effective date of this Decision, have a mental health examination including psychological testing
23 as appropriate to determine her capability to perform the duties of a registered nurse. The
24 examination will be performed by a psychiatrist, psychologist or other licensed mental health
25 practitioner approved by the Board. The examining mental health practitioner will submit a
26 written report of that assessment and recommendations to the Board. All costs are the
27 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
28 result of the mental health examination will be instituted and followed by Respondent.

1 If Respondent is determined to be unable to practice safely as a registered nurse,
2 the licensed mental health care practitioner making this determination shall immediately notify
3 the Board and Respondent by telephone, and the Board shall request that the Attorney General's
4 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
5 practice and may not resume practice until notified by the Board. During this period of
6 suspension, Respondent shall not engage in any practice for which a license issued by the Board
7 is required, until the Board has notified Respondent that a mental health determination permits
8 Respondent to resume practice. This period of suspension will not apply to the reduction of this
9 probationary time period.

10 If Respondent fails to have the above assessment submitted to the Board within
11 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
12 practice until notified by the Board. This period of suspension will not apply to the reduction of
13 this probationary time period. The Board may waive or postpone this suspension only if
14 significant, documented evidence of mitigation is provided. Such evidence must establish good
15 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
16 provided. Only one such waiver or extension may be permitted.

17 **19. Therapy or Counseling Program.** Respondent, at her expense, shall
18 participate in an on-going counseling program until such time as the Board releases her from this
19 requirement and only upon the recommendation of the counselor. Written progress reports from
20 the counselor will be required at various intervals.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 1-3-08


THEOTISTE P. CLARK
Respondent

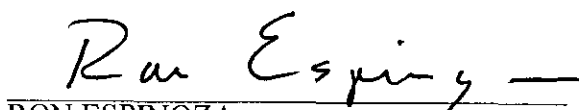
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: 1/4/08

EDMUND G. BROWN JR., Attorney General
of the State of California

JAMES LEDAKIS
Supervising Deputy Attorney General


RON ESPINOZA
Deputy Attorney General

Attorneys for Complainant

Exhibit A
Accusation No. 2008-58

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 LINDA K. SCHNEIDER

Supervising Deputy Attorney General

3 RON ESPINOZA, State Bar No. 176908

Deputy Attorney General

4 California Department of Justice

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8 Attorneys for Complainant

10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 2008-58

14 THEOTISTE P. CLARK

1100 Sportfisher Drive

15 Oceanside, CA 92054

ACCUSATION

16 Registered Nurse License No. 563910

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
22 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
23 Department of Consumer Affairs.

24 2. On or about February 17, 2000, the Board of Registered Nursing issued
25 Registered Nurse License number 563910 to Theotiste P. Clark (a.k.a. Theotiste P. Nulsen)
26 (Respondent). The license expired on November 30, 2005. A temporary 150-day license was
27 later issued to Respondent pursuant to Family Code section 17520 and is set to expire on
28 October 7, 2007.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

. . . .

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

. . . .

7. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic

1 beverages, to an extent or in a manner dangerous or injurious to himself or herself,
2 any other person, or the public or to the extent that such use impairs his or her
3 ability to conduct with safety to the public the practice authorized by his or her
4 license.

5 (c) Be convicted of a criminal offense involving the prescription,
6 consumption, or self-administration of any of the substances described in
7 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
8 record pertaining to, the substances described in subdivision (a) of this section, in
9 which event the record of the conviction is conclusive evidence thereof.

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11 8. Section 482 of the Code states:

12 Each board under the provisions of this code shall develop criteria to
13 evaluate the rehabilitation of a person when:

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15 (b) Considering suspension or revocation of a license under Section 490.

16 Each board shall take into account all competent evidence of rehabilitation
17 furnished by the applicant or licensee.

18 9. Section 490 of the Code states:

19 A board may suspend or revoke a license on the ground that the licensee
20 has been convicted of a crime, if the crime is substantially related to the
21 qualifications, functions, or duties of the business or profession for which the
22 license was issued. A conviction within the meaning of this section means a plea
23 or verdict of guilty or a conviction following a plea of nolo contendere. Any
24 action which a board is permitted to take following the establishment of a
25 conviction may be taken when the time for appeal has elapsed, or the judgment of
26 conviction has been affirmed on appeal, or when an order granting probation is
27 made suspending the imposition of sentence, irrespective of a subsequent order
28 under the provisions of Section 1203.4 of the Penal Code.

10. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any
diversion program under the Penal Code, or successful completion of an alcohol
and drug problem assessment program under Article 5 (commencing with Section
23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
any agency established under Division 2 (commencing with Section 500) of this
code, or any initiative act referred to in that division, from taking disciplinary
action against a licensee or from denying a license for professional misconduct,
notwithstanding that evidence of that misconduct may be recorded in a record
pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program
operated by any agency established under Division 2 (commencing with Section
500) of this code, or any initiative act referred to in that division.

1 11. Section 493 of the Code states:

2 Notwithstanding any other provision of law, in a proceeding conducted by
3 a board within the department pursuant to law to deny an application for a license
4 or to suspend or revoke a license or otherwise take disciplinary action against a
5 person who holds a license, upon the ground that the applicant or the licensee has
6 been convicted of a crime substantially related to the qualifications, functions, and
7 duties of the licensee in question, the record of conviction of the crime shall be
8 conclusive evidence of the fact that the conviction occurred, but only of that fact,
9 and the board may inquire into the circumstances surrounding the commission of
10 the crime in order to fix the degree of discipline or to determine if the conviction
11 is substantially related to the qualifications, functions, and duties of the licensee in
12 question.

13 As used in this section, 'license' includes 'certificate,' 'permit,'
14 'authority,' and 'registration.'

15 12. California Code of Regulations, Title 16, section 1444 states:

16 A conviction or act shall be considered to be substantially related to the
17 qualifications, functions or duties of a registered nurse if to a substantial degree it
18 evidences the present or potential unfitness of a registered nurse to practice in a
19 manner consistent with the public health, safety, or welfare. Such convictions or
20 acts shall include but not be limited to the following:

21 (a) Assaultive or abusive conduct including, but not limited to, those violations
22 listed in subdivision (d) of Penal Code Section 11160.

23

24 (c) Theft, dishonesty, fraud, or deceit.

25

26 13. California Code of Regulations, Title 16, section 1445 states:

27

28 (b) When considering the suspension or revocation of a license on the
 grounds that a registered nurse has been convicted of a crime, the board, in
 evaluating the rehabilitation of such person and his/her eligibility for a license will
 consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or
 offense(s).

(4) Whether the licensee has complied with any terms of
 parole, probation, restitution or any other sanctions lawfully
 imposed against the licensee.

1 (5) If applicable, evidence of expungement proceedings
2 pursuant to Section 1203.4 of the Penal Code.

3 (6) Evidence, if any, of rehabilitation submitted by the licensee.

4 14. Section 125.3 of the Code provides, in pertinent part, that the Board may
5 request the administrative law judge to direct a licensee found to have committed a violation or
6 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
7 and enforcement of the case.

8 **DRUGS**

9 15. Methamphetamine is a Schedule II controlled substance pursuant to Health
10 and Safety Code section 11055(d)(2), and classified as a dangerous drug pursuant to section 4022
11 of the Code.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Criminal Conviction - Petty Theft - 6/21/2006)**

14 16. Respondent has subjected her license to disciplinary action under Code
15 sections 490 and 2761(f), in that she was convicted of a crime that is substantially related to the
16 qualifications, functions, and duties of a Registered Nurse. The circumstances are as follows:

17 a. On or about June 21, 2006, in a criminal proceeding entitled
18 *People v. Theotiste Plum Nulsen* (a.k.a. Theotiste Plum Clark), in San Diego County Superior
19 Court, case number M992552, Respondent was convicted by plea of no contest to violating Penal
20 Code sections 484(a)/488 (petty theft), a misdemeanor.

21 b. As a result of the conviction, on or about June 21, 2006, the court
22 ordered Respondent to serve 90 days in the county jail. The sentence was ordered to run
23 concurrent with case numbers CN211098 and CN202173 (see below). On or about July 13,
24 2006, Respondent was released from custody to serve the remainder of her sentence in a
25 residential drug treatment program.

26 c. The circumstances that led to the conviction were that on or about
27 June 10, 2006, Respondent entered a Nordstrom department store and was observed by store
28 security concealing store merchandise and leaving without paying for the items. Respondent was

1 stopped outside the store and detained by store security until taken into custody by the San Diego
2 Police Department. Respondent was arrested (citizen's arrest) for theft. At the time of her arrest,
3 Respondent had four outstanding warrants for her arrest.

4 SECOND CAUSE FOR DISCIPLINE

5 **(Criminal Conviction - Under the Influence of a Controlled Substance - 6/20/2006)**

6 17. Respondent has subjected her license to disciplinary action under Code
7 sections 490 and 2761(f), in that she was convicted of a crime that is substantially related to the
8 qualifications, functions, and duties of a Registered Nurse. The circumstances are as follows:

9 a. On or about June 20, 2006, in a criminal proceeding entitled
10 *People v. Theotiste Plum Nulsen* (a.k.a. Theotiste Plum Clark), in San Diego County Superior
11 Court, case number CN211098, Respondent was convicted by plea of guilty of violating Health
12 and Safety Code section 11550(a) (under the influence of a controlled substance—
13 methamphetamine), a misdemeanor.

14 b. As a result of the conviction, on or about June 20, 2006,
15 Respondent was sentenced as follows: imposition of sentence suspended for three years and
16 Respondent granted summary probation. Respondent was ordered to serve 90 days in jail, but
17 this was stayed pending successful completion of probation and a drug treatment program. The
18 sentence was ordered to be served consecutive to case number CN202173 (see below). On or
19 about July 10, 2006, Respondent's probation was revoked and reinstated for her failure to report
20 to the Assessment Unit. Respondent was released on probation on the condition that she contact
21 the Family Recovery Center on a daily basis or other drug treatment program as per the
22 Assessment Unit.

23 c. The circumstances that led to the conviction were that on or about
24 April 4, 2006, a Carlsbad Police Department patrol officer contacted Respondent while she was
25 walking in the parking lot of a Motel 6. Respondent agreed to speak to the officer. During his
26 contact with Respondent, the officer observed the following: Respondent exhibited bruxism
27 (teeth grinding), exhibited dry mouth, Respondent appeared agitated, had a short attention span
28 and an inability to concentrate. During the course of conversation with the officer, Respondent

1 admitted she was an intravenous user of methamphetamine. Based on his observations and
2 Respondent's behavior, the officer arrested Respondent for being under the influence of a
3 controlled substance. In a search incident to arrest, the officer found four used hypodermic
4 needles in Respondent's make-up bag, and she was additionally charged with possession of
5 paraphernalia.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct - Use of a Controlled Substance - 11/23/05)**

8 18. Respondent has subjected her license to disciplinary action under Code
9 section 2761(a), on the grounds of unprofessional conduct as described in Section 2762(b), in
10 that she used a controlled substance to an extent or in a manner dangerous or injurious to herself
11 or the public. The circumstances are as follows:

12 a. On or about January 4, 2006, in a criminal proceeding entitled
13 *People v. Theotiste Plum Nulsen* (a.k.a. Theotiste Plum Clark), in San Diego County Superior
14 Court, case number CN204843, Respondent failed to appear for her arraignment on charges of
15 violating Health and Safety Code section 11550(a) (under the influence of a controlled
16 substance) and Penal Code section 594(a)(b)(2)(a) (vandalism under \$400), misdemeanors. Due
17 to her failure to appear, a bench warrant was issued for Respondent. Respondent's criminal case
18 was later dismissed as part of a plea bargain in case number CN211098 (see above).

19 b. The circumstances that led to the criminal proceeding were that on
20 or about November 23, 2005, San Diego County Sheriff's Deputies responded to a disturbance
21 call at the home of Respondent and her husband, "TC." TC reported to one of the deputies that
22 he had been arguing with Respondent over her drug addiction, and Respondent began breaking
23 items in the house and throwing the contents of the refrigerator on the floor. One of the deputies
24 noticed that Respondent was in a very agitated, near hysterical state. Respondent was speaking
25 rapidly and seemed unable to stand still. The deputy conducted an examination of Respondent
26 and observed muscle rigidity, dilated pupils, and eyelid fluttering when she stood with her eyes
27 closed and head tilted back. Based on Respondent's symptoms, and that she had created a
28 disturbance, the deputy determined that Respondent was unable to care for her safety and she was

1 arrested for being under the influence of a controlled substance. A blood sample provided by
2 Respondent subsequent to her arrest tested positive for methamphetamine.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct - Use of Controlled Substance - 11/16/2005)**

5 19. Respondent has subjected her license to disciplinary action under Code
6 section 2761(a), on the grounds of unprofessional conduct as described in section 2762(b), in that
7 she used a controlled substance to an extent or in a manner dangerous or injurious to herself or
8 the public. The circumstances are as follows:

9 a. On or about November 16, 2005, in a criminal proceeding entitled
10 *People v. Theotiste Plum Nulsen* (a.k.a. Theotiste Plum Clark), in San Diego County Superior
11 Court, case number CN202173, Respondent pled guilty to being under the influence of a
12 controlled substance (methamphetamine) in violation of Health and Safety Code section
13 11550(a), a misdemeanor.

14 b. On or about November 16, 2005, pursuant to Penal Code section
15 1000, Respondent's application for deferred entry of judgment was granted. Judgment was
16 ordered deferred for 18 months, and Respondent was ordered to report to the Assessment Unit.

17 c. The circumstances that led to the criminal proceeding were that on
18 or about October 20, 2005, San Diego County Sheriff's Deputies responded to a domestic
19 disturbance call at the home of Respondent and Respondent's husband, "TC." TC reported to
20 one of the deputies that the previous day, Respondent had assaulted him by cutting his foot,
21 scratching his arm, and biting his wrist. According to TC, Respondent also smashed out the
22 windshield of TC's sports utility vehicle with a baseball bat. At the scene, it was observed that
23 Respondent's pupils were dilated, her speech was rapid, she had trouble standing still, and a
24 white paste covered her tongue. Respondent admitted to one of the deputies that she had used
25 methamphetamine earlier in the day. The deputy also observed puncture marks on Respondent's
26 left forearm. Respondent was subsequently arrested for spousal battery and being under the
27 influence of a controlled substance. A urine sample provided by Respondent subsequent to her
28 arrest tested positive for methamphetamine.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct -**
3 **Assault With a Deadly Weapon and Spousal Abuse - 9/17/2005)**

4 20. Respondent has subjected her license to disciplinary action under Code
5 section 2761(a) on the grounds of unprofessional conduct in that on or about September 17,
6 2005, she was arrested for violating Penal Code section 245(a)(1) (assault with a deadly weapon)
7 and Section 273.5(a) (infliction of corporal injury on her spouse). Such conduct is substantially
8 related to the qualifications, functions, and duties of a Registered Nurse. The circumstances are
9 as follows:

10 a. On or about September 17, 2005, in response to a radio call to
11 investigate a possible spousal abuse, deputies from the San Diego County Sheriff's Department
12 arrived at the home of Respondent and Respondent's husband, "TC." TC reported to one of the
13 deputies that during an argument on September 10, 2005, Respondent stabbed him in the bicep
14 with a screwdriver. When TC attempted to restrain Respondent, she bit him on the forearm.
15 Law enforcement was not contacted.

16 b. TC also reported that on September 14, 2005, during an argument,
17 Respondent swung a golf club at TC and hit him in the right hand as he held up his hand to
18 defend himself. Law enforcement was not contacted.

19 c. On this occasion (September 17, 2005), TC reported that
20 Respondent had hit him with a hollow plastic rod on the right wrist. One of the deputies took
21 photographs of TC's swollen right hand, bruising on his forearm, and a scabbed-over puncture
22 wound on his left bicep. Respondent was subsequently arrested for assault with a deadly weapon
23 and spousal abuse.

24 **PRAYER**

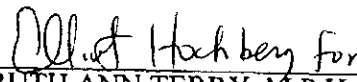
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein
26 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

27 1. Revoking or suspending Registered Nurse License Number 563910 issued
28 to Theotiste P. Clark (a.k.a. Theotiste P. Nulsen);

1 2. Ordering Theotiste P. Clark (a.k.a. Theotiste P. Nulsen) to pay the Board
2 of Registered Nursing the reasonable costs of the investigation and enforcement of this case,
3 pursuant to Business and Professions Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.
5

6 DATED: 8/21/07

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8 
9 RUTH ANN TERRY, M.P.H., R.N.
10 Executive Officer
11 Board of Registered Nursing
12 Department of Consumer Affairs
13 State of California
14 Complainant

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